

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211595

DATE: September 26, 1983

MATTER OF: Federal Computer Corporation

DIGEST:

RFP to upgrade disk drives for computers which requires offerors to provide with offer certification from manufacturer and maintainer of equipment permitting offeror to install proposed equipment into currently installed equipment is not unduly restrictive of competition where agency is unable to prepare detailed specifications and requirement is dictated by agency's minimum needs.

Federal Computer Corporation (Federal) protests the fact that paragraph C.2.2.3 of request for proposals (RFP) No. DAAA08-83-R-0109 issued by the United States Army Armament Materiel Readiness Command (Army) requires offerors to provide a certification from Vion Corporation (Vion) and National Advance Systems (National) which permits the offerors to install the proposed additional equipment and features into the Vion manufactured computer disks.

Federal contends that the requirement to obtain a certification from its competitor before the RFP's closing date is an improper "pre-qualification of a bidder's ability to be responsive."

We deny the protest.

The procurement is negotiated pursuant to 10 U.S.C. § 2304(a)(10) (1982) which permits negotiation when it is impracticable to obtain competition by formal advertising. The Army reports that the procurement is for equipment and services involved in the upgrade of 24 computer disks from Vion 7330-1 single density disk drive to Vion 7330-11 dual density capability. This modification will increase each

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disk's capacity from 100 megabytes to 200 megabytes. Because of the impossibility of acquiring a basis for evaluation of the offering firms' technical knowledge and their ability to upgrade the Vion components, the Army states that it placed the certification requirement in paragraph C.2.2.3. The Army reports that the technical aspects of the 24 disks which are to be upgraded, while owned by the Army, were acquired from Vion under performance specifications. The currently installed disk drives are under existing contract with Vion, with National performing maintenance services. Neither drawings nor similar specifications are under Army control or available to the Government. Therefore, the Army states that nothing exists which may be used to develop the basis required for understanding the techniques applied and materials offered to upgrade the existing system or to otherwise evaluate the services to be rendered by the offering firms other than by performance upon completion of the solicited work. The improved disks after completion of the work must be compatible with the four electro-mechanical controllers which monitor and work the disks. Improper performance by the disks or failure of the disks to perform as required will be detected by the electro-mechanical controllers. The Army states that malfunctioning of the disks would fundamentally shut down many operations at Rock Island Arsenal. The Army further states that the certification clause is no more restrictive than any other technical specification where the needed item is of a specific but exacting type and held to a minimum standard of quality and workmanship. The procuring activity also states that C.2.2.3 certification has been made and that competition exists.

Procuring activities enjoy broad discretion in determining their needs because Government procurement officials, familiar with the particular conditions under which equipment or services are to be used or performed, are in the best position to know the Government's actual needs and to draft appropriate specifications. Romar Consultants, Inc., B-206489, October 15, 1982, 82-2 CPD 339. Our Office will not question an agency's determination of its minimum needs or the technical judgment forming the basis for that determination unless it is clearly shown to be unreasonable. Municipal & Industrial Pipe Services Ltd., B-204595, January 18, 1982, 82-1 CPD 39.

Nonetheless, a procuring activity may not impose requirements which exceed its actual needs and, when a protester challenges a specification as unduly restrictive of competition, it is incumbent upon the procuring activity to establish prima facie support for its restriction. Constantine N. Polites & Co., B-189214, December 27, 1978, 78-2 CPD 437. The restriction will be upheld in such cases if there is a reasonable basis for it. California Computer Products, Inc., B-193329, July 3, 1979, 79-2 CPD 1. While agencies should formulate their needs so as to maximize competition, requirements which may limit competition are not unreasonable so long as they reflect the Government's legitimate minimum needs. Romar Consultants, Inc., supra.

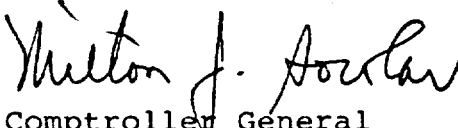
Although Federal refers to the certification requirement as amounting to a prequalification of offerors, we believe Federal is essentially arguing that the requirement for certification unduly restricts competition. Prequalification deals with presolicitation procedures for determining the responsibility of prospective offerors. 53 Comp. Gen. 209 (1973).

We believe the record contains sufficient support for the certification requirement. The contracting officer states that the certification requirement is to preclude the possibility that performance by an uncertified contractor could result in nonfunctioning, vitally needed equipment, and the Government would have no feasible remedy to make the equipment functional. The contracting officer alleges that the Government does not have the capacity to prepare detailed specifications and performance requirements to allow offers on an unrestricted, uncertified basis.

Federal has offered no evidence in rebuttal of the Army's explanation except to question the Army's contention that competition exists. Although the number and identity of offerors may not be disclosed in the preaward situation present here, the record indicates that, contrary to Federal's contention, competition has been obtained in this procurement. Further, there is no indication that Federal would have been denied certification if it had applied for it. Thus, it is not apparent that the certification requirement deprived Federal of the opportunity to compete.

As the Army notes in its report, generally, we have regarded requirements for prequalification by manufacturers and independent testing laboratories unduly restrictive of competition. See Worcester Electrical Associates, B-193064, April 5, 1979, 79-1 CPD 236; 20 Comp. Gen. 903 (1941). However, in those cases, the information necessary to make an independent evaluation of a firm's ability to perform was available to the agency. In the present case, no Government personnel has knowledge of the procedures used to upgrade Vion disks nor knowledge of the hardware used to complement the procedures used in their placement. Because of this lack of knowledge concerning its own equipment and the materials and techniques used to improve it, the agency finds it necessary to rely on Vion's and National's proprietary knowledge. Under these circumstances, the agency does not have the necessary information to make an independent evaluation, and, therefore, the requirement that offerors obtain certification from Vion and National is reasonable. See 50 Comp. Gen. 542, 545 (1971).

Based on the foregoing, we conclude that the Army certification requirement for the subject RFP is not unduly restrictive since it reflects the agency's minimum needs.

for 
Comptroller General
of the United States